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TAI KWANG SDN. BHD.

v.

PEMUNGUT HASIL TANAH, ULU LANGAT

HIGH COURT MALAYA, KUALA LUMPUR

SITI NORMA YAAKOB J

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[ORIGINATING SUMMONS NO. F 1214 OF 1985]

18 MARCH 1986

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LAND LAW: *Acquisition - Compensation - Payment under protest - Non-compliance of time factor stated in s. 39(2) of the Land Acquisition Act 1960 - Finality of award - Application for extension of time under s. 38(7) of the Act - Discretion of Court to extend time.*

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In 1980, the defendant acquired 5 acres of the plaintiff's land in Cheras and offered the plaintiff RM350,000 as compensation which the plaintiff duly accepted, under protest. The plaintiff then requested the defendant to refer its objection on the quantum of compensation to the High Court. The defendant, after acknowledging the plaintiff's objection, requested the plaintiff to deposit a sum of RM1,000 as security for the reference and appeal. Section 39(2) of the Land Acquisition Act 1960 ("the Act") provides that such deposit shall be made within 14 days of such request, failing which the defendant's award is deemed to become final. The plaintiff however took 55 days to make the deposit and the defendant refused to refer the matter to the High Court. The plaintiff then brought this action in the High Court for an extension of time. The issue before the Court was whether s. 39(2) of the Act gives the Court any discretion to enlarge time.

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Held:

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[1] Section 39(2) is mandatory in nature and since the defendant did not receive the deposit of RM1,000 within the 14 days stipulated under the section, the defendant's award became final and the defendant is right in not taking any steps to refer the plaintiff's objection to the High Court. Where an enactment is in clear and unequivocal language and is capable of only one meaning it must be enforced however harsh the result may be. See *Pemungut Hasil Tanah Kota Tinggi v. United Malayan Banking Corporation Berhad* [1981] 2 MLJ 264.

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[2] Section 38(7) gives to the Court a discretion to give directions to the Collector as to the conduct and hearing of the plaintiff's objections but such a discretion must be exercised judiciously. On the facts of the present case, the plaintiff delayed in bringing the present proceedings and the Court therefore exercised its discretion and decided against giving any directions to the Collector.

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[3] The plaintiff however still has a remedy by way of *certiorari* and this remedy is never taken away by statute as the word "final" means final on the fact but not final on the law. See *Re Gilmore's Application* [1957] 1 All ER 796 and *Tehrani & Anor. v. Rostron* [1971] 3 All ER 790.

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[Plaintiff's application dismissed with costs.]

Cases referred to:

Pemungut Hasil Tanah Kota Tinggi v. United Malayan Banking Corporation Limited [1981] 2 MLJ 264

Re Gilmore's Application [1957] 1 All ER 796

Tehrani & Anor. v. Rostron [1971] 3 All ER 790

Legislation referred to:

Land Acquisition Act 1960, ss. 39, 39(2), 38(6), 38(7)

For the plaintiff - K. Sivam; M/s. P.G. Lim & Co.

For the defendant - A. Fairuz bin Dato' Sheikh Abdul Halim; State Legal Adviser

JUDGMENT

Siti Norma Yaakob J:

On 19 September 1980, the defendant acquired 5 acres of the plaintiff's land in Cheras and offered the plaintiff RM350,000 as compensation. The plaintiff accepted the amount under protest and on 29 October 1980, applied to the defendant to refer its objection on the quantum of the compensation to the High Court. Receipt of such objection was acknowledged by the defendant on 5 December 1980, and it requested the plaintiff to deposit a sum of RM1,000, a security for the reference and appeal. Under s. 39(2) of the Land Acquisition Act 1960 (the Act), such deposit shall be made within 14 days of such request, failing which the defendant's award is deemed to become final. The plaintiff however took 55 days to make the deposit and the defendant acting under s. 39(2) of the Act refused to refer the matter to the High Court. Dissatisfied with this decision, the plaintiff filed this originating summons for extension of time within which its objection on the quantum of compensation be referred to the High Court under s. 38(6) or alternatively, under s. 38(7) of the Act.

The fact that it had not made the deposit within the 14 days specified under s. 39(2) is not disputed by the plaintiff and the only issue before me is whether that section gives me any discretion to enlarge time.

The application is firstly made under s. 38(6) of the Act which reads follows:

Where the Collector has failed to make a reference to the High Court within the period specified in subsection (5), the Collector or any person interested may apply to the Court for an extension of the said period.

Subsection (5) is worded in the following manner:

On receiving any application under subsection (1) the Collector shall, **subject to the provisions** of s. 39, within three months refer the matter to the Court by a reference in form O.

Reading these two subsections, especially the words that I have underlined in subsection (5), the Collector before taking any action to refer the objections to the High Court within the time stipulated, i.e. 3 months from the receipt of the written notice of the objection in form N, must be satisfied that s. 39 has been complied with. Section 39 refers to what the Collector must do before referring any objection to the High Court. Under subsection (1), he may require the person making the application, to deposit a sum not exceeding RM1,500 or the amount of his award which ever is the lesser, as security for the costs of reference and appeal. Subsection (2) goes further to state that such deposit shall be made within 14 days of its request following which "the application for reference shall be deemed to be withdrawn and the Collector's award shall thereupon become final."

On the facts of the case before me, the defendant did not receive the deposit of RM1,000 asked for within the 14 days stipulated under s. 39(2). As that section is mandatory, the defendant's award became final and the defendant is right in not taking any steps to refer the plaintiff's objection to the High Court. There is no ambiguity as to the meaning of s. 39(2). It is mandatory in nature and where an enactment in clear and unequivocal language

a is capable of only one meaning it must be enforced however harsh the result may be. See the case of *Pemungut Hasil Tanah Kota Tinggi v. United Malayan Banking Corporation* [1981] 2 MLJ 264.

b On the alternative plea, that I deal with the plaintiff's objection by giving directions to the Collector as to the conduct and hearing of its objections under s. 38(7) of the Act, no doubt the subsection gives me a discretion to order so but that discretion must be exercised judiciously. The award was made as long ago as 19 September 1980. It is only 4 years and 10 months later that the plaintiff decided to bring the present proceedings. The plaintiff may blame this delay on the defendant for only notifying the fact that s. 39(2) has not been complied with on 16 July 1984, 3 years and 6 months after the deposit was made on 22 January 1981. Even if that be so, the plaintiff took another year from 16 July 1984 to bring the present proceedings and from numerous correspondence attached to its affidavit, the plaintiff has

c had the same solicitors acting on its behalf. In view of this delay, I decided against exercising my discretion to direct the Collector to refer the matter to the High Court. Another reason is that the plaintiff still has a remedy by way of *certiorari* to have the Collector's award scrutinised by the High Court. The decision of the Court of Appeal in *Re Gilmore's Application* [1957] 1 All ER 796 and *Tehrani & Anor. v. Rostron* [1971] 3 All ER 790 are

d authorities for the proposition that the remedy of *certiorari* is never taken by any statute as the word "final" means final on the fact but not final on the law.

For the above reasons, I had dismissed plaintiff's application with costs.

Also found at [1986] 2 CLJ 320

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